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15 IN THE UNITED STATES DISTRICT COURT
16
17 EASTERN DISTRICT OF CALIFORNIA

18 UNITED STATES OF AMERICA,

19 CASE NO. 2:21-CR-00044-JAM

20 Plaintiff,

21 v.
22
23 **AMENDED STIPULATION TO CONTINUE
24 STATUS CONFERENCE AND EXCLUDE TIME
25 PERIODS UNDER SPEEDY TRIAL ACT;
26 FINDINGS AND ORDER**

27 TYSON FARRELL,

28 Defendant.

DATE: August 24, 2021

TIME: 9:30 a.m.

COURT: Hon. John A. Mendez

17 This case was set for a status conference on August 24, 2021. By this stipulation, the parties
18 request that the Court continue the status conference to November 2, 2021, and to exclude time under
19 Local Code T4, as well under the Court's General Orders, for the reasons set forth below.

20 On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the
21 Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to
22 continue all criminal matters to a date after June 1. This and other General Orders, both previous and
23 subsequent, were entered to address public health concerns related to COVID-19.

24 Although the General Orders address the district-wide health concern, the Supreme Court has
25 emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive
26 openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.
27 *Zedner v. United States*, 547 U.S. 489, 509 (2006). "[W]ithout on-the-record findings, there can be no
28 exclusion under" § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at

1 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 2 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 3 or in writing”).

4 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 5 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 6 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 7 the ends of justice served by taking such action outweigh the best interest of the public and the
 8 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 9 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 10 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 11 the defendant in a speedy trial.” *Id.*

12 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 13 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 14 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 15 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 16 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 17 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 18 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 19 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 20 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

21 In light of the societal context created by the foregoing, this Court should consider the following
 22 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 23 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 24 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any
 25 pretrial continuance must be “specifically limited in time”).

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¹ The parties note that General Order 612 acknowledges that a district judge may make “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D. Cal. March 18, 2020).

STIPULATION

1. By this stipulation, the United States and defendant Tyson Farrell, through his undersigned counsel, move to continue the status conference until **November 2, 2021, at 9:30 a.m.**, and to exclude time between August 24, 2021, and November 2, 2021, under Local Code T4 and under the Court's General Orders.

2. The parties agree and stipulate, and request that the Court find the following:

a) The government has represented that the discovery associated with this case includes approximately 110 pages of investigative reports in electronic form. All of this discovery has been either produced directly to counsel or has been made available for inspection and copying. The government anticipates producing additional discovery in the near future as it becomes available.

b) Counsel for the defendant desires additional time to review the discovery, develop the case, conduct investigation, consult with her client, discuss potential resolution, and to explain the consequences and guidelines. There have been various delays in the evidence inspection because of out-of-town coordination for many schedules.

c) Defense counsel represents and believes that failure to grant additional time as requested would deny Mr. Farrell the reasonable time necessary for effective preparation, considering the exercise of due diligence.

d) The government does not object to this continuance.

e) Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence

f) In addition to the public health concerns cited by General Order 611 and presented by the evolving COVID-19 pandemic, an ends-of-justice delay is particularly apt in this case because some of investigation defense counsel seeks has required travel around the state, which has been hampered by concerns for health and safety. Defense counsel and defense investigators have been encouraged to telework and minimize personal contact to the greatest extent possible, and to that end would be best served by delaying any investigation that could

1 require inter-personal contact.

2 g) Based on the above-stated findings, the ends of justice served by continuing the
3 case as requested outweigh the interest of the public and the defendant in a trial within the
4 original date prescribed by the Speedy Trial Act.

5 h) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161,
6 et seq., within which trial must commence, the time period of August 24, 2021 to November 2,
7 2021, inclusive, is deemed excludable pursuant the Court's General Orders, in the interest of
8 public health and safety, as well as to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because
9 it results from a continuance granted by the Court at defendant's request on the basis of the
10 Court's finding that the ends of justice served by taking such action outweigh the best interest of
11 the public and the defendant in a speedy trial, and pursuant to the Court's General Orders, in
12 light of the public safety concerns created by the COVID-19 pandemic.

13 3. Nothing in this stipulation and order shall preclude a finding that other provisions of the
14 Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial
15 must commence.

16 IT IS SO STIPULATED.

17 Dated: August 23, 2021

PHILLIP A. TALBERT
Acting United States Attorney

18 /s/ JAMES R. CONOLLY
19 JAMES R. CONOLLY
20 Assistant United States Attorney

21 Dated: August 23, 2021

22 /s/ TIMOTHY ZINDEL
23 TIMOTHY ZINDEL
24 Assistant Federal Defender
Counsel for Defendant
TYSON FARRELL

FINDINGS AND ORDER

25 IT IS SO FOUND AND ORDERED this 23rd day of August, 2021.

26
27 /s/ John A. Mendez
28 THE HONORABLE JOHN A. MENDEZ
UNITED STATES DISTRICT COURT JUDGE